

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

October 15, 2007

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No. 07-20183  
Summary Calendar

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Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JOSE LUIS ESPINOSA-HERNANDEZ, also known as Jose Luis Espinosa

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:06-CR-328-1

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Before JOLLY, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:\*

Jose Luis Espinosa-Hernandez appeals the sentence imposed following his conviction of one charge of illegal reentry into the United States. He argues that the district court erred by imposing a sentence that exceeded the pertinent guidelines recommendation. Our review of the record, including the exhaustive reasons given by the district court in support of its judgment, shows no

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

reversible error in connection with Espinosa-Hernandez's sentence. See *United States v. Smith*, 440 F.3d 704, 706-08 (5th Cir. 2006).

Espinosa-Hernandez also challenges the constitutionality of § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury. Espinosa-Hernandez's constitutional challenge is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1998). Although he contends that *Almendarez-Torres* was incorrectly decided and that a majority of the Supreme Court would overrule *Almendarez-Torres* in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), we have repeatedly rejected such arguments on the basis that *Almendarez-Torres* remains binding. See *United States v. Garza-Lopez*, 410 F.3d 268, 276 (5th Cir. 2005). Espinosa-Hernandez properly concedes that his argument is foreclosed in light of *Almendarez-Torres* and circuit precedent, but he raises it here to preserve it for further review. The judgment of the district court is AFFIRMED.